

**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

EQUIPMENT ACQUISITION RESOURCES, INC.

Debtor.

Chapter 11

Case No. 09-39937

Hon. John H. Squires

Hearing Date: December 3, 2009

Hearing Time: 9:30 am

NOTICE OF MOTION

To: See Attached Service List

PLEASE TAKE NOTICE that on December 3, 2009 at 9:30 am, or as soon thereafter as counsel may be heard, the undersigned will appear before the Honorable John H. Squires, Bankruptcy Judge, or such other judge as may be sitting in his stead, in courtroom 680 or in such other courtroom as occupied by him, 219 South Dearborn Street, Chicago, Illinois and shall then and there present the attached **DEBTOR'S MOTION FOR AUTHORITY TO ABANDON REAL AND PERSONAL PROPERTY, SURRENDER REAL AND PERSONAL PROPERTY AND REJECT AND TERMINATE REAL AND PERSONAL PROPERTY LEASES ON SHORTENED NOTICE**, at which time and place you may appear as you see fit.

Dated: November 25, 2009

Respectfully submitted,
Equipment Acquisition Resources, Inc.
Debtor and Debtor-in-Possession

By: /s/ Barry A. Chatz
One of its attorneys

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CERTIFICATE OF SERVICE

I, Barry A. Chatz, an attorney, certify that I caused a copy of the foregoing Notice of Motion and Motion to be served on the parties listed on the attached service list by depositing same in the U.S. Mail with proper postage prepaid to those not on the Court's ECF System and by the Court's ECF System to those entities entitled to electronic service, on November 25, 2009.

/s/ Barry A. Chatz

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**UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:

EQUIPMENT ACQUISITION RESOURCES, INC.

Debtor.

Chapter 11

Case No. 09-39937

Hon. John H. Squires

Hearing Date: December 3, 2009

Hearing Time: 9:30 am

**MOTION OF DEBTOR FOR AUTHORITY TO ABANDON REAL AND PERSONAL
PROPERTY, SURRENDER REAL AND PERSONAL PROPERTY AND REJECT AND
TERMINATE REAL AND PERSONAL PROPERTY LEASES ON SHORTENED
NOTICE**

EQUIPMENT ACQUISITION RESOURCES, INC., as debtor and debtor in possession (the "Debtor"), by and through its counsel, Arnstein & Lehr LLP, moves this Court for entry of an order: (1) authorizing it to abandon certain property of the estate on shortened notice; (2) authorizing it to surrender such property to its senior lien holder, Republic Bank, and any other claimed interests pursuant to 11 U.S.C. § 554 and Bankruptcy Rule 6007; (3) finding that the Debtor waives and surrenders any rights to or interest in such property and authorizing the Debtor not to take any further actions to preserve and protect the same; and (4) authorizing it to reject and terminate certain leases pursuant to 11 U.S.C. §365, Bankruptcy Rules 2002, 6006 and 9014 and Local Rule 9014-1 of the Local Rules of the United States Bankruptcy Court for the Northern District of Illinois. In support of this motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

2. Consideration of this motion is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. The statutory predicates for the relief requested with respect to abandonment of property of the estate are 11 U.S.C. § 554 and Rule 6007 of the Federal Rules of Bankruptcy Procedure.

4. The statutory predicates for the relief requested with respect to rejection and termination of leases are Section 365 of the United States Bankruptcy Code, Federal Rules of Bankruptcy Procedure 2002, 6006 and 9014 and Local Rule 9014-1 of the United States Bankruptcy Court for the Northern District of Illinois.

BACKGROUND

5. This case was commenced when the Debtor filed a voluntary petition for relief under chapter 11 of title 11, United States Code (the "Bankruptcy Code") on October 23, 2009 (the "Petition Date").

6. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to manage its financial affairs as a debtor in possession. No trustee, examiner or committee has been appointed in this case.

7. The Debtor is an Illinois Corporation, organized and existing under the laws of the state of Illinois and operating in several buildings near its headquarters at 555 S. Vermont Street, Palatine, Illinois.

8. Prior to commencement of this case, the Debtor purported to be a market maker in the semiconductor manufacturing equipment sales and servicing industry. The Debtor marketed and sold technologically advanced equipment to customers throughout the world. The Debtor also purported to perform processing services for companies in the semiconductor industry.

9. The Debtor owns and/or leases more than 2000 pieces of semiconductor manufacturing equipment, other equipment, and parts (the "Equipment"). The Debtor is indebted to multiple lenders that hold liens on various pieces of equipment. Two lenders, Republic Bank and Norstates Bank, assert liens on and security interests in all of the assets of the Debtor, including cash. Republic is the senior lien holder and is owed approximately \$6.67 million as of the Petition Date; Norstates Bank is owed approximately \$9.06 million as of the Petition Date. The Debtor's secured debt totals, in the aggregate, approximately \$135 million.

10. On October 8, 2009, after it became apparent that the Debtor may have engaged in fraudulent activity, the members of the Debtor's board of directors and its officers resigned. The shareholders elected William A. Brandt, Jr. as the sole member of the board of directors and as the Chief Restructuring Officer (the "CRO"). The CRO filed the bankruptcy petition to manage the Debtor's assets for the benefit of all creditors.

11. On or about October 27, 2009, the following entities quitclaimed certain real property to the Debtor which the Debtor had previously used as business offices, warehouses, and storage facilities (the "Real Property"):

12.

Grantor	Property Description
Gerald Vermont Street, LLC	<p>THE SOUTH 178 FEET OF LOT 15 IN KLEFSTAD'S PALATINE INDUSTRIAL PARK, BEING A SUBDIVISION OF THAT PART OF THE EAST HALF OF THE SOUTHWEST QUARTER OF SECTION 23, TOWNSHIP 42 NORTH, RANGE 10, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING WEST OF THE WEST RIGHT OF WAY LINE OF STATE ROUTE NUMBER 53 (HICKS ROAD), IN COOK COUNTY, ILLINOIS.</p> <p>PERMANENT REAL ESTATE INDEX NUMBERS: 02-23-313-034-0000</p> <p>ADDRESS OF REAL ESTATE: 555 S. VERMONT STREET, PALATINE, ILLINOIS</p>
Gerald Illinois I, LLC	<p>LOTS 16, 17, 18 AND 19 IN WALTER'S RESUBDIVISION OF LOTS 1 TO 9, BOTH INCLUSIVE, LOTS 84 TO 91, BOTH INCLUSIVE, AND LOT 93 IN BLOCK 3 AND LOTS 1 TO 16, BOTH INCLUSIVE, IN BLOCK 5 IN ELECTRIC PARK SUBDIVISION IN THE SOUTH ½ OF SECTION 24, TOWNSHIP 40 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.</p> <p>COMMONLY KNOWN AS: 3280 NORTH CALIFORNIA AVENUE, CHICAGO, ILLINOIS</p> <p>PERMANENT REAL ESTATE INDEX NUMBERS: 13-24-314-062-0000, 13-24-316-016-0000; 13-24-316-017-0000; AND 13-24-316-018</p>

Mortgages totaling in excess of \$9 million were recorded against each piece of the Real Property prior to the Debtor's receipt and recording of the quitclaim deeds. The Debtor has determined that there is no equity in the Real Property.

13. Debtor is also a lessee under various non-residential leases, as amended from time to time (the "Warehouse Leases") for its other Illinois warehouses and storage facilities (the "Leased Warehouses") which are used to store the Equipment. The

Leased Warehouses are more specifically described as follows:

Lessor	Property Description
GIS Venture, Beneficiary and Holder of Power of Direction of DuPage National Bank u/t/n 1603, u/t/d/ 1/13/94	13,400 Square Foot Warehouse 601 S. Vermont Street Palatine, Illinois 60067
GIS Venture, Beneficiary and Holder of Power of Direction of DuPage National Bank u/t/n 1603, u/t/d/ 1/13/94	5,450 Square Foot Warehouse 629 S. Vermont Street Palatine, Illinois 60067
GIS Venture, Beneficiary and Holder of Power of Direction of DuPage National Bank u/t/n 1603, u/t/d/ 1/13/94	8,000 Square Food Warehouse 645 S. Vermont Street Palatine, Illinois 60067
GIS Rolling, L.L.C.	8,000 Square Food Warehouse 649 S. Vermont Street Palatine, Illinois 60067

14. Since the Petition Date, the Debtor has met with appraisers to determine the value of its ownership and leasehold interests in the Equipment, which is located in Illinois at the Real Property and Leased Warehouses. On or about November 18, 2009, the Debtor determined that its ownership and leasehold interests in the Equipment had no value or negligible value to the estate. No appraiser is willing to sell the Equipment, except for a fixed fee and no appraiser will agree to a minimum price for the sale of the Equipment.

15. The Debtor has ceased all operations at the Real Property and Leased Warehouses. The Equipment is not necessary to accomplish a liquidation of the Debtor's assets and the Debtor's resources will be depleted by the costs of maintaining the Real Property, the Warehouse Leases, leasing of the Equipment (the "Equipment Leases"), and storing the Equipment for which there is no value to the Debtor's bankruptcy estate.

RELIEF REQUESTED

16. The Debtor seeks the entry of an order: (1) authorizing it to abandon all of

its ownership and leasehold interests in the Equipment, Real Property, and the Leased Warehouses on shortened notice; (2) authorizing it to surrender all of its ownership and leasehold interests in the Equipment, Real Property, and the Leased Warehouses to its senior lien holder, Republic Bank, and any other claimed interests pursuant to 11 U.S.C. § 554 and Rule 6007 of the Federal Rules of Bankruptcy Procedure; (3) finding that the Debtor waives and surrenders any rights to or interest in the Equipment, Real Property, and the Leased Warehouses and authorizing the Debtor not to take any further actions to preserve and protect the same; and (4) authorizing the Debtor to reject and terminate the Equipment Leases and Warehouse Leases pursuant to 11 U.S.C. §365(a).

BASIS FOR RELIEF

I. Abandoning Property of the Estate

17. 11 U.S.C. § 554 provides that upon the motion of the trustee or other party in interest the Court may, after proper notice and hearing, authorize a trustee “to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.” 11 U.S.C. § 554(a) – (b).

18. Rule 6007 of the Federal Rules of Bankruptcy Procedure provides that “the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to the United States trustee, all creditors, indenture trustees, and committees elected pursuant to § 705 or appointed pursuant to § 1102 of the Code.”

19. Since the Petition Date, the CRO has been focusing on his discussions with various creditors regarding their respective rights to the Equipment. The CRO has also been working closely with appraisers to determine the value of the Equipment. As a result, the CRO has determined that no appraiser will sell the Equipment without payment of a substantial fee and that the Debtor’s ownership and leasehold interests

in the Equipment are of inconsequential value and benefit to the estate. The CRO has further determined that the Real Property has no equity and that the Real Property and Leased Warehouses are of inconsequential value and benefit to the estate.

20. The Debtor therefore requests that the Court enter an order: (1) authorizing it to abandon its ownership and leasehold interests in the Equipment, Real Property, and Leased Warehouses; (2) authorizing it to surrender the same to its senior lien holder, Republic Bank, and any other claimed interests pursuant to 11 U.S.C. § 554 and Rule 6007 of the Bankruptcy Rules; and (3) finding that the Debtor waives and surrenders any rights to or interest in the Equipment, Real Property, and the Leased Warehouses and authorizing the Debtor not to take any further actions to preserve and protect the same.

II. Rejection and Termination of Leases

21. Section 365(a) of the Bankruptcy Code provides that a debtor may assume or reject any unexpired lease of the debtor. 11 U.S.C. § 365(a). The right to reject an unexpired lease “serves to relieve the debtor of contractual obligations that are unduly burdensome” and “provides the counterpart with only a non-priority unsecured claim for the resulting damages.” *Precision Indus., Inc. v. Qualitech Steel SBQ*, 327 F.3d 537, 546 (7th Cir. 2003); *In re UAL Corp.*, 346 B.R. 456, 467 (Bankr. N.D.Ill. 2006).

22. Section 365(d) (2) permits a debtor in possession that is party to an unexpired lease of personal property to determine whether to accept or reject a lease at “any time before the confirmation of a plan.” 11 U.S.C. 365(d) (2).

23. Section 365(d) (4) (A) permits a debtor in possession that is party to an unexpired lease of nonresidential real property 120 days to determine whether to

accept or reject a lease. If the debtor does not elect to accept or reject a nonresidential real property lease during this period, section 365(d)(4)(A) deems the lease rejected.

24. Under the Bankruptcy Code, most courts apply a business judgment test to evaluate a debtor in possession's decision to accept or reject a lease. See *Orion Pictures Corp. v. Showtime Networks, Inc.*, 4 F.3d 1095 (2nd Cir. 1993); *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303 (5th Cir. 1985); *In re Prime Motors, Inc.* 124 B.R. 378 (Bankr. S.D. Fla. 1991).

25. Rejecting and terminating the Equipment Leases and Warehouse Leases will not prejudice any party and is in the best interest of the estate. In fact, by rejecting and terminating the foregoing leases, the Debtor is eliminating an administrative expense claim that would not benefit the creditors of this estate given the Debtor's desire to wind down its business operations on an expedited basis.

26. The Debtor therefore requests that the Court enter an order authorizing it to reject and terminate the Equipment Leases and Warehouse Leases pursuant to 11 U.S.C. § 365.

NOTICE

27. Pursuant to Rule 6007, Notice of this Motion has been given to: (a) the Office of the United States Trustee; and (b) all creditors. There are no indenture trustees and no committee has been elected pursuant to § 705 or appointed pursuant to § 1102 of the Code.

28. The Debtor has provided seven (7) days notice. The Debtor requests that the relief requested herein be provided on shortened notice. The circumstances of this case require that notice be shortened as the assets discussed herein are of no value to the estate or the Debtor, and the costs to preserve the assets continue to accrue to

the detriment of the estate. The assets are either subject to lien or ownership of third parties. In light of the foregoing, the Debtor submits that no further notice need to be given.

CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court enter an order on shortened notice:

- (1) authorizing it to abandon all of its ownership and leasehold interests in the Equipment, Real Property, and the Leased Warehouses;
- (2) authorizing it to surrender all of its ownership and leasehold interests in the Equipment, Real Property, and the Leased Warehouses to its senior lien holder, Republic Bank, and any other claimed interests pursuant to 11 U.S.C. § 554 and Rule 6007 of the Federal Rules of Bankruptcy Procedure;
- (3) finding that the Debtor waives and surrenders any rights to or interest in the Equipment, Real Property, and the Leased Warehouses and authorizing the Debtor not to take any further actions to preserve and protect the same;
- (4) authorizing the Debtor to reject and terminate the Equipment Leases and Warehouse Leases pursuant to 11 U.S.C. §365(a); and
- (5) granting such other relief as this Court may deem just and proper.

Dated: November 25, 2009

Respectfully submitted,
Equipment Acquisition Resources, Inc.
Debtor and Debtor-in-Possession

By: /s/ Barry A. Chatz
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